

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6172 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

SIDDIK KASAM SINDHI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR AB VYAS, ASSISTANT GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/02/99

ORAL JUDGEMENT

The petitioner through this writ petition under Article 226 of the Constitution of India has challenged the detention order dated 23.7.1998 passed by the District Magistrate, Rajkot under section 3(2) of the prevention of Antisocial Activities Act (for short 'PASA') and has prayed for quashing the said detention

order with further prayer to release him immediately from illegal detention.

From the grounds of detention it appears that the Detaining Authority came to subjective satisfaction on the basis of five registered cases under Bombay Prohibition Act and two cases under various sections of the Indian Penal Code that the petitioner is a bootlegger as well as dangerous person within the meaning of sections 2(b) and 2(c) of the PASA. From the statements of confidential witnesses, it was found that the activities of the petitioner were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed.

The detention order has been challenged on two grounds. The first is that the representation dated 1.8.1998 sent by an Advocate of the detenu to the State Government was not considered, rather, it was returned back on 3.8.1998 with remark that the representation did not bear signature of the detenu. No counter affidavit has been filed by the State of Gujarat to rebut this allegation in the writ petition. The learned Assistant Government Pleader after verifying his record admitted that the representation dated 1.8.1998 was returned by the State Government on 3.8.1998 with remark that it did not bear signature of the detenu. No further compliance was sought in the said communication. Time and again it has been held by this Court that representation of the detenu sent by the Advocate neither requires signature of the detenu nor authority letter from the detenu nor vakalatnama from the detenu and that such representation should be decided on merits. That has not been done in the instant case. The validity of the detention order has to be tested on the touch stone of Article 22(5) of the Constitution of India. The right to make representation is one of the guarantees contained in Article 22(5) of the Constitution of India. It implies that if such representation is made, it shall be decided expeditiously by the State Government. Since, the representation has not been decided by the State Government the detention order and continued detention of the petitioner cannot be sustained.

The second ground of attack has been that the gist of statements of confidential witnesses has not been disclosed in the grounds of detention and that the activities of the petitioner cannot be said to be prejudicial for maintenance of public order. After going through the grounds of detention I find that the Detaining Authority in this case has done research by not

providing the gist of statements of confidential witnesses, rather, he had chosen to supply copies of statements of witnesses to the petitioner along with the grounds of detention and mention of this fact has been made in the grounds of detention. If the Detaining Authority entered in this research, he did so at his own peril. Technically, it can be said that there was sufficient compliance of Article 22(5) of the Constitution of India in as much as along with grounds of detention the entire material including the statements of the confidential witnesses were supplied to the petitioner. This compliance is not enough when this Court is examining the validity of the detention order. Neither the petitioner nor the learned Assistant Government Pleader has cared to file copies of the statements of the confidential witnesses. The petitioner could not be compelled to file incriminating evidence against him in this writ petition. It was for the learned Assistant Government Pleader to bring on record the copies of the statements of the confidential witnesses. Since, the copies of the statements of the confidential witnesses are not on record this Court cannot hold that the subjective satisfaction of the Detaining Authority regarding activities of the petitioner being prejudicial for maintenance of public order was in accordance with law. Hence, on this ground also the impugned order of detention cannot be sustained.

In the result, the writ petition succeeds and is hereby allowed. The impugned order of detention dated 23.7.1998 is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt